Filed 3/30/09 In re J.P. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.P., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. R.P., Defendant and Appellant.	G040725 (Super. Ct. No. DP016002-001) O P I N I O N

Appeal from an order of the Superior Court of Orange County, James Patrick Marion, Judge. Affirmed.

Seth F. Gorman, under appointment by the Court of Appeal, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

* * *

R.P. appeals the juvenile court's orders denying reunification services and terminating the parental rights of her four-and-one-half-year-old daughter, J.P. R.P. focuses her arguments on the denial of reunification services, claiming she showed a "reasonable effort to treat" her ongoing drug addiction. But R.P. ignores the evidence that she missed multiple visits with the daughter, appeared under the influence of drugs during several visits, missed many of her twice-weekly drug tests, and failed to even show up at the dispositional hearing. Because the evidence sufficiently supports the juvenile court's order denying reunification services, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

R.P. has an extensive history of drug-related problems, including an addiction to cocaine, heroin, and prescription drugs. She also has a lengthy drug-related criminal record.

J.P. was born in August 2004. In 2005, R.P. allowed J.P. to move out of state with the maternal grandmother because she believed the child would benefit from a better environment. J.P. subsequently was returned to R.P.'s sole care.

In April 2006, R.P. gave birth to a second sibling, J.P.'s half brother. About four months later, in August 2006, R.P. was arrested for petty theft at an electronics store. Investigators observed fresh track marks on her arm, indicating recent heroin use.

In October 2006, the juvenile court declared J.P.'s half brother a dependent of the court because of R.P.'s unresolved substance abuse problems, and her inability to provide for his care. The half brother was sent to reside with the maternal grandmother, with reunification services provided to R.P. The following spring, J.P. joined her half

brother to live with the maternal grandmother, while R.P. stayed in a sober living home. J.P. was subsequently released to R.P.'s care.

J.P. came into the dependency system in September 2007 when reports of R.P.'s erratic behavior reached authorities, including a "'melt down'" when she was denied prescription anti-anxiety drug medication. Orange County Social Services Agency (SSA) filed a dependency petition alleging R.P. failed to protect her child based (among other factors) on her admitted consumption of at least 20 pills over a three-day period, her drug-seeking behavior, and her unresolved mental health concerns.[1]

In October 2007, R.P. admitted to a social worker that she had an ongoing substance abuse problem. "'I don't want to use drugs but I guess it will always be there if I have a bad day.'" The same month, R.P. received treatment at a hospital emergency room for drug withdrawal.

At the jurisdiction hearing in November 2007, R.P. pleaded nolo contendere to the amended petition. The juvenile court found the allegations in the petition true by a preponderance of the evidence.

Reunification services were provided for the half brother, but the juvenile court terminated R.P.'s parental rights to him in the fall of 2007. The court concluded R.P.'s substance abuse issues and history posed a substantial danger to the half brother's physical health, safety, protection, or physical or emotional well-being.

R.P. did not show up for prescheduled visits with the daughter twice in October 2007, five times in November, and once in December. R.P. admitted to a social worker in December 2007 that she was addicted to pain pills. A treating physician,

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[1] R.P. had been terminated from the drug rehabilitation program in which she had been enrolled, had two positive tests for Xanax the previous summer, and missed multiple drug tests.

Dr. Huy Kim Hoang, reached the same conclusion, stating "'I'm not going to give her anymore (Xanax).'" In January 2008, R.P. revoked her authorizations to release her medical information to the SSA.

R.P. gave birth to a third sibling, J.P.'s half sister, in January 2008. The infant tested positive for benzodiazepine and methadone, and was treated for withdrawal symptoms.[2]

In late February 2008, R.P. apparently was under the influence of a drug during one of her visits with the daughter. R.P.'s speech was slurred and her pupils were dilated after a bathroom visit. Several days later, during another monitored visit, a social worker similarly reported that R.P.'s speech was slurred and she was perspiring profusely. The visit was terminated "due to her being under the influence."

R.P. did not call to confirm her two mid-March 2008 monitored visits, as required, and the visits were cancelled. On March 16, 2008, R.P. left the shelter where she was residing, and the social worker could not locate her.

On April 1, 2008, the juvenile court held a combined dispositional hearing for J.P. and her half sister. R.P. did not appear, and her counsel could not explain her absence. The court terminated reunification services pursuant to Welfare and Institutions Code section 361.5, subdivisions (b)(10), (b)(13)[3]. Although the court declined to

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[2] R.P. challenges this evidence regarding the infant half sister's drug addiction as outside the record at the disposition hearing. "The post-judgment evidence should not be used to fill the gap to create substantial evidence where it did not exist in the first place." R.P. overlooks the hearing transcript at the combined dispositional hearing for both siblings, which shows that three agency reports (dated Feb. 20, 2008, Mar. 5, 2008 and Apr. 1, 2008) concerning the infant were introduced into evidence and argued to the court, without objection, to establish the infant half sister's drug dependency at birth.

[3] All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

provide reunification services, it ordered financial assistance to R.P. for drug treatment, counseling, and other programs to help her reunify with her children.

R.P. eventually was located in jail. She explained she had been arrested for "'failure to report'" to her probation officer and did not know how long she would be incarcerated.

The section 366.26 hearing was held in July 2008. R.P. attended the hearing while in custody. The pediatrician expressed concerns about the negative impacts R.P.'s visits had on J.P. The court found J.P. adoptable, noting her foster mother expressed interest in adopting her. The court terminated R.P.'s parental rights, and found that adoption would be in J.P.'s best interests. R.P. filed a timely notice of appeal.

II

DISCUSSION

The parties agree R.P. may appeal the denial of reunification services given the absence of evidence she received notice of her right to seek writ relief. (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110; *In re Cathina W.* (1998) 68 Cal.App.4th 716, 724.)

The termination of R.P.'s parental rights as to her son does not automatically mean that R.P. loses her parental rights as to her other children. Instead, as R.P. correctly contends, the "reasonable effort to treat" clause in the dependency statutes allows a parent who has worked towards correcting the underlying problems to continue to obtain services. (§ 361.5, subd. (b)(10).)[4]

[4] Section 361.5, subdivision (b)(10), provides, "Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence . . . [¶] . . . [¶] That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent

On the other hand, under section 361.5, subdivision (b)(10), the court may deny reunification services in "recidivism" situations where the parent has failed to reunify with a sibling of the child *and* it is shown the parent has not diligently worked to correct the underlying problems. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) "'Once it is determined one of the situations outlined in [section 361.5,] subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]'" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

We review the court's determination to deny reunification services for substantial evidence, examining the record in a light most favorable to the juvenile court's findings and conclusions. (*In re James C.* (2002) 104 Cal.App.4th 470, 480.) So long as reasonable inferences from the evidence support the conclusions of the trier of fact, we do not substitute our deductions for those reached below. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.)

R.P. challenges the sufficiency of the evidence to support the juvenile court's order denying reunification services, arguing that the record compels any reasonable factfinder to conclude that she has made a "reasonable effort to treat" the problems that led to the removal of J.P.'s half brother. R.P. points to evidence that she has "made strong efforts to address her substance abuse history and other issues" by applying to and being accepted at a sober living home, enrolling in a hospital detoxification program, acknowledging her drug history, and complying with her

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or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian."

methadone maintenance program. According to R.P., no substantial evidence in the record supports a conclusion to the contrary. R.P., citing *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464, argues the evidence only sustains the inference that she "stumbled," and that section 361.5, subdivision (b)(10), does not equate "reasonable effort to treat" with "cure."

But the timeline of R.P.'s efforts show a regression, not a progression in dealing with the problems that led to the denial of reunification services. As the time for her dispositional hearing neared, R.P.'s behavior became more erratic, culminating in her disappearance. As the court noted at the hearing, "we don't know where she's at." Far from showing that she was on the road to recovery, R.P.'s conduct during the critical months of February and March 2008 demonstrate that she was headed in the wrong direction. The court reasonably could conclude her vulnerable child should not be taken along for such a rocky ride.

There is substantial evidence to support the dispositional findings by clear and convincing evidence that R.P. failed to make reasonable efforts to treat her substance abuse problems that led to removal of her son and termination of reunification services with him. (§ 361.5, subd. (b)(10).) Even after the juvenile court terminated reunification services with J.P.'s half brother, R.P. continued to abuse drugs to the point where she gave birth in January 2008 to a baby suffering from drug withdrawal. A month later, monitors observed R.P. to be under the influence of drugs during several of her visits with J.P. R.P.'s assertions of participation in twice-weekly drug sessions are contradicted by records showing patterns of inconsistent and missed visits, all counting as positive drug tests. She had been expelled from her most recent sober living home, and stopped regular drug testing, despite her admitted addiction. Her "lackadaisical" and "half-

hearted efforts" cannot be equated with reasonable efforts to treat. (See discussion in *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 99.)

Because the court properly denied R.P. reunification services under subdivision (b)(10) of section 361.5, it is unnecessary to consider whether the court's order denying services pursuant to subdivision (b)(13) was proper. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76 (*Jasmine C.*).) Reunification services are properly denied if the juvenile court properly found by clear and convincing evidence that *one* of the circumstances in subdivision (b) applies. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72 ["We are not required to determine whether the findings under subsection (12) are correct because we uphold the court's determination that subsection (10) applies in this case"].)

R.P. does not explain what will be gained by reversing and remanding for a new hearing on the application of the *alternative* exception in section 361.5, subdivision (b)(13), for denying reunification services to a parent. "For the court to have provided appellant with yet another set of services would have been an exercise in futility." (*Jasmine C.,* 70 Cal.App.4th at p. 76.)

III
DISPOSITION

The order terminating parental rights is affirmed.

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ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.